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8 **UNITED STATES DISTRICT COURT**  
9 **NORTHERN MARIANA ISLANDS**

10 UNITED STATES OF AMERICA, ) Criminal Case No. 07-00029

11 v. ) Plaintiff,

12 )  
13 LI, ZONG GUO, )  
14 )  
15 )  
16 Defendant. )

**GOVERNMENT'S RESPONSE  
TO DEFENDANT'S MOTION TO  
DISCLOSE INFORMATION  
ABOUT CONFIDENTIAL  
INFORMANT**

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19 COMES NOW the United States of America, by its undersigned counsel, and opposes the  
20 defendant's Motion for Disclosure of Information Regarding the Government's Confidential  
21 Informant. The government first notes that it intends to honor its discovery obligations as  
22 required by law. Furthermore, in compliance with the Order Granting Waiver of Speedy Trial  
23 and Amending Scheduling issued by this Court on January 15, 2008, the government will provide  
24 a list of intended witnesses (which includes the informant), and will include their legal names,  
25 aliases, nicknames, places of residence and places of employment. This information will be  
26 provided at least one week prior to trial.

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1       The Court's existing deadlines notwithstanding, the defendant now seeks immediate  
2 disclosure of the identity of the government's confidential informant. When exercising its  
3 discretion as to whether (and presumably when) an informant's identity must be disclosed, the  
4 Court must weigh the accused's interests against the informant's security and the public's interest  
5 in the free flow of information. Roviaro v. United States, 353 U.S. 53, 62 (1957). The  
6 government does not dispute that the informant in this case played a significant role in the alleged  
7 criminal transaction, and accordingly the defendant is entitled to receive information regarding  
8 the informant with sufficient time to prepare for trial. As to defendant's request to compel an  
9 immediate or early disclosure of the informant's identity, the government submits that the  
10 defendant has failed to provide *prima facie* grounds justifying such an order.

11       The government recognizes that its privilege to withhold the identity of the informant is  
12 not absolute. Roviaro, 353 U.S. at 60-61. It is, however, the defendant's burden to establish the  
13 necessity for disclosure. United States v. Whitney, 633 F.2d 902, 911 (9th Cir. 1980), cert. denied,  
14 450 U.S. 1004 (1981). This burden cannot be met simply by speculating that the disclosure will be  
15 helpful. United States v. Trejo-Zambrano, 582 F.2d 460, 466 (9th Cir. 1978)(citation omitted).  
16 Nor will a mere statement that the information is necessary to prepare for trial justify compelling  
17 disclosure. United States v. Richter, 488 F.2d 170, 175 (9th Cir. 1973). See also United States v.  
18 Moreno, 588 F.2d 490, 494 (5th Cir. 1979)(citation omitted)(the mere possibility of obtaining  
19 relevant testimony does not compel disclosure). The defendant in this case requests an order  
20 compelling early disclosure because he "may" claim entrapment, and he "may" file additional  
21 motions. Defendant, however, offers no evidence, or even a theory, to explain why the  
22 entrapment defense may be viable, and why early disclosure of the informant's identity is  
23 "relevant and helpful to the defense, or is essential to a fair determination of the case." Rovario,  
24 353 U.S. at 62.

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1        It is worth noting that the case may be resolved through a plea agreement well in advance  
2 of trial. Because Saipan is a small community, informants are both hard to come by and easy to  
3 reach; therefore, the public has a strong interest weighs strongly in favor of requiring disclosure  
4 only when it appears likely that there will be a trial. Rule 16(a) of the Federal Rules of Criminal  
5 Procedure does not require the government to disclose its entire case to the defendant. It is  
6 significant to note that, in 1975, Congress considered and rejected a proposed amendment to Rule  
7 16 which would have required compulsory disclosure of witnesses in non-capital cases. See  
8 United States v. Brown, 535 F.2d 424, 429 n.3 (8th Cir. 1976); Joint Explanatory Statement of the  
9 Committee of Conferences, 121 Cong. Rec. H. 7683 (July 28, 1975). This amendment was  
10 defeated because Congress feared that such disclosure would encourage improper attempts to  
11 influence witnesses prior to trial. Brown, 535 F.2d at 429 n.3. The government has a legitimate  
12 concern for the well-being of its witnesses and an interest in maximizing the usefulness of each  
13 informant. To grant the defendant's motion would judicially condone a fishing expedition, thus  
14 creating a precedent that will undermine future law enforcement efforts. For these reasons, the  
15 defendant's motion should be denied.

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17 Respectfully submitted this 31<sup>st</sup> Day of January, 2008.

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/s/  
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